

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





74-1550

74-1550

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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NO. 74-1550

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THE UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
-against-  
CARMINE TRAMUNTI, et al.,  
Defendants-Appellants.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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253 DEFENDANTS-APPELLANTS' JOINT APPENDIX  
Vol. T(39) - Pages 5381 to 5422

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2 UNITED STATES OF AMERICA

3 vs.

4 CARMINE TRAMUNTI, et al.

5 New York, March 10, 1974,

6 10:45 a.m.

7  
8 Deliberations resumed.

9 - -

10 (10:45 a.m.; note received from the jury:

11 "Your Honor, I don't quite know how to put  
12 this but may I ask if we are not allowed to speak to  
13 alternates or discuss present case is it not also  
14 wrong for a juror to write data from that said case.  
15 I know we were told no magazines, playing cards and such,  
16 which would distract our mind from what we are here for,  
17 but this person is copying data from the said indict-  
18 ment on a pad in her purse. I have spoken to her about  
19 it because I feel I am responsible since the marshal  
20 says I am responsible for the papers. I just have a  
21 fear of leakage before we reach a verdict. So  
22 please acquaint the jury with what they should not do  
23 over again and I suggest her pad be confiscated, quietly.

24 "Thanking you, I remain, No. 1 Juror, Forelad"

25 Here."

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(In open court.)

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MR. PHILLIPS: Your Honor, Mr. Dowd and Mr.

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Fusso are not here.

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MR. LEIGHTON: Mr. Dowd is here.

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THE COURT: Bring him back, will you.

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MR. PHILLIPS: Mr. Pollak is not here

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either.

9

THE COURT: I think you all recognize that

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we have an extremely conscientious jury. At least, I

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believe so, the way they read the exhibits, each and

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every one spending a lot of time doing it, the way they

13

looked at everything.

14

I received a note this morning from one of

15

the jurors. I will mark the note as a court's exhibit,

16

but I intend to do absolutely nothing about it right now.

17

I think you recall in semi-jest when we

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first were selecting the jury I made a comment -- I am

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not even sure that I made it on the record or I made

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it to the total jury panel or I just made it to some

21

people as I was excusing them -- that they had missed the

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great opportunity as they were being excused to write the

23

great American novel and what it is like to be sequestered

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Apparently some juror has made some notes

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from the indictment. In other words, they looked at



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2 the indictment, wrote down a couple of things.

3 The indictment is a public document that  
4 they can get at any time. Another juror says (a) she  
5 can't do that or he can't do that. I can't tell one  
6 way or the other. It is quite obvious that they can.

7 I don't think it is necessary to bring the  
8 jury out here and tell them, "You can't take notes, you  
9 can't wrote about what is in the indictment." They  
10 are there, they have the indictment in front of them.  
11 Of course they can take notes.

12 You recall at the beginning of the case one  
13 juror asked whether she could take notes and I said no,  
14 I didn't want anybody taking notes. What we have  
15 here is a situation where another juror feels that this  
16 continues on into the deliberations.

17 MRS. ROSNER: Your Honor, may I hear the  
18 note read in open court?

19 THE COURT: Yes, I will read it.

20 MRS. ROSNER: I would suggest, your Honor,  
21 that we need not bring the jury out, but your Honor can  
22 express your feelings concerning the pernissibility of  
23 the juror's behavior in a note which the marshals can  
24 carry into the jury.

25 MR. PHILLIPS: Before we do anything, let's

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2 hear the note.

3 MR. ELLIS: Your Honor, perhaps it would  
4 be appropriate though to remind the jury that the in-  
5 dictment is only a charge.

6 THE COURT: All right. Let me read you  
7 the note.

8 "Your Honor, I don't quite know how to put  
9 this, but may I ask if we are not allowed to speak to  
10 alternates or discuss present case is it not also  
11 wrong for a juror to write date from that said case.  
12 I know we were told no magazines, playing cards  
13 and such, which would distract our minds from what we are  
14 here for, but this person is copying data from the said  
15 indictment on a pad in her purse. I have spoken to her  
16 about it because I feel I am responsible since the  
17 marshal says I am responsible for the papers. I just  
18 have a fear of leakage before we reach a verdict. So  
19 please acquaint the jury with what they shouldn't do  
20 over again and I suggest her pad be confiscated quietly.

21 "Thanking you, I remain, No. 1 Juror Fore-  
22 lady Hare."

23 Yes, Mr. King.

24 MR. KING: Your Honor, I have something  
25 that I would like to bring to your attention which I



1 jha  
2 deem of extreme importance.

3 THE COURT: Has it got to do with this  
4 note?

5 MR. KING: It has nothing to do with the  
6 note.

7 THE COURT: Hold on. Let's work on this  
8 note.

9 MR. DOWD: I just have a question which  
10 maybe you should ponder.

11 Obviously if this is taking place in delibera-  
12 tions it is a totally different matter, which I suspect  
13 from the reading is exactly the case.

14 The only question I have -- I don't think it  
15 is worth bringing the jury out and interrogating them  
16 about it -- do you think by any means that note means  
17 prior to deliberations.

18 THE COURT: No. She didn't have the in-  
19 dictment prior so how could it be prior to deliberations.

20 The suggestion has been made that I send a note  
21 back to No. 1 Juror, Forelady Hare, which I am willing to  
22 do, and I will see if I can draft up something and get  
23 everybody to agree to it. However, it is almost impos-  
24 sible to get everybody to agree to anything here.

25 MRS. ROSNER: Your Honor, I would suggest you

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2 let defense counsel read the exhibit and sit down  
3 together and try to frame what we would agree would be an  
4 appropriate answer and at least get agreement among all  
5 defense counsel.

6 THE COURT: If you can get agreement among  
7 all defense counsel, Mrs. Rosner, you are a magician.  
8 But if you can that is fine by me.

9 MR. WARNER: Your Honor, if the note just  
10 said no note-taking is permissible during deliberations --

11 THE COURT: Why don't you read it and see  
12 what you can do.

13 MR. PANZER: It is not clear from that  
14 note whether she is taking the notes back to the motel  
15 at night. Maybe that is what the problem is. Cer-  
16 tainly they can take notes while they are deliberating.  
17 When they are through deliberating, I think that is  
18 when the problem arises.

19 MR. LOPEZ: Judge Duffy, may I suggest  
20 that the government declare its position.

21 MR. CURRAN: Your Honor, as far as I can tell  
22 from what your Honor read, I think it's pretty simple.  
23 I think it's pretty simple. I think they should be  
24 told they can take notes while they are deliberating  
25 and not while they are not deliberating.



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2 MR. PHILLIPS: Your Honor might further  
3 explain to them that your direction with respect to  
4 taking notes at the beginning of the trial related to the  
5 evidence.

6 I think there is also something in that note  
7 that requires answering and that is whether or not they  
8 can talk to the alternates.

9 THE COURT: Absolutely not. The alter-  
10 nates have been completely segregated. They don't  
11 even go to the same restaurant.

12 MR. PHILLIPS: Your Honor, my suggestion  
13 was that you answer the question, which is "Can we talk  
14 to the alternates?"

15 THE COURT: No. It is a statement, "We  
16 are not allowed to speak to the alternates or discuss  
17 present case."

18 The alternates have not been near the jury at  
19 all. I have been very strict about that. You might  
20 know we have a bus to transport the jury back and forth,  
21 but I have hired a separate limousine to carry the  
22 alternates. As I said, I sent them to different  
23 restaurants. How much more can I do?

24 They are at a different part of the hotel.  
25 They are not permitted to pass that guard post outside  
of the jury area in the hotel.

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Mr. Clerk, mark this as a court's exhibit.

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Ladies and gentlemen of the defense, I suggest you take a crack at writing the note, see what you can do.

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(Court's Exhibit 81 marked for identification.)

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MR. KING: Yesterday, if your Honor please,

was the first opportunity I had to see the transcript

of March 7th. They were brought down yesterday. In

going over it last night I was quite disturbed to run

across the following, and I ask your Honor to please bear

with me. This is extracted from Mr. Curran's summation

on page 5051, and I quote:

"Sinatra, do you remember Sinatra, John Gamba, the defendant here, the stash man? You heard about him from Pannirello and you heard about him from John Barnaba.

"Did John Barnaba lie about that transaction, the involvement of Sinatra, again? He simply testified that at the going away party the night before Butch Pugliese went to jail Pugliese came up to him and asked him what he, Barnaba, thought of using Sinatra, Gamba, as a stash man in connection with this other operation that Pugliese had going with Barnaba, and Barnaba simply said, 'I



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2 don't know."

3 5052: "But doesn't that corroborate what  
4 we learn from Pannirello, who had been arrested by the  
5 federal authorities? John Barnaba's testimony."

6 Thne on 5053: "Then you have the testimony  
7 of Jimmy Provitera," and dropping towards the end of  
8 that paragraph the simple sentence: "Again, Sinatra's  
9 hosue, Gamba's house."

10 Now, that is in Mr. Curran's summation and  
11 here is what Barnaba actually said on pages 1460 and -61,  
12 line 15:

13 "Q Who was present?

14 "A There was myself, Joe Sharp, Frank Si-  
15 natra, Harry, Patty was there. That's about it.

16 "Q Butch Pugliese was there?

17 "A Yes.

18 "Q During that get-together did you have  
19 a conversation with Butch Pugliese?

20 "A Yes. He asked me what I thought of  
21 Frank Sinatra as a stash?

22 "Q As a stash?

23 "A Yes."

24 1461:

25 "Q What did that mean to you?

1 jha

2 "A Somebody to hold goods for.

3 "Q What did you say to that question?"

4 And this is what I am talking about, Judge.

5 "A I says I didn't know Sinatra that  
6 well, 'You probably know him better than me. There's  
7 nothing I can tell you about him.'"

8 If your Honor please, this is a deliberate  
9 cropping of a statement made by a man in the same way  
10 that they cropped photos in the McCarthy hearing.

11 THE COURT: Oh, wait a second. Wait a  
12 second.

13 MR. KING: If you compare it, the man  
14 simply said, "I don't know." There is a vast amount of  
15 difference between "I don't know" and the actual state-  
16 ment "I don't even know the man."

17 MR. CURRAN: That is not the actual statement

18 MR. KING: That is a deliberate distortion  
19 to the jury and I think the jury even at this late stage --  
20 it's important enough, Judge -- should be corrected on  
21 what it was that Barnaba said.

22 MR. CURRAN: Your Honor, in the first place,  
23 I did not say --

24 MR. KING: Excuse me, Mr. Curran. I am  
25 not finished.



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2 MR. CURRAN: I am sorry. Excuse me, your  
3 Honor.

4 MR. KING: Then on page 5140 Mr. Curran  
5 stated:

6 "Well, ladies and gentlemen, as the United  
7 States attorney for this district I have a great obliga-  
8 tion to and esteem for my client. My client is the  
9 United States. I want to leave you with the knowledge  
10 that that obligation is one to which I am firmly com-  
11 mitted.

12 "Ladies and gentlemen, we have an obligation  
13 to justice. That is my obligation, it is Mr. Phillips',  
14 Mr. Fortuin's, Mr. Engel's, in this case and in every  
15 case."

16 In other words, he laid the prestige of the  
17 United States attorney of this district and his assist-  
18 ants and the United States Government on the line after  
19 deliberately cropping a statement that was made, and it is  
20 as plain as the nose on his face, and I say that it is  
21 important enough at this point that the jury be dis-  
22 abused of what he said.

23 THE COURT: I don't think so. If that  
24 is a motion, Mr. King, the motion is denied.

25 Let me know when you have a draft ready, Mrs.

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Rosner.

(Recess.)

(In open court.)

THE COURT: I understand that all defense counsel have agreed to me sending a note back to the forelady which reads:

"Madam Forelady, I have received your note. I wish to instruct the jury that it is perfectly permissible for any member of the jury to take notes to aid him or herself during deliberations. As I have repeatedly instructed you, the indictment is not evidence of any kind but it does set forth the various accusations and a juror may find it useful to make notes on it."

Is that agreeable to every defense counsel?

MR. POLLAK: Yes.

THE COURT: All right. I have a carbon copy. It will be marked the next court's exhibit.

(Court's Exhibit 82 was marked for identification.)

THE COURT: I got another note from the jury:

"Your Honor, is it possible to hear testimony regarding a particular count along with the defense without hearing unrelated testimony?"

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"Thank you, Madam Forelady."

The answer is yes, but they have to specify what they want. I can't give an answer to it, really. For example, if the question is can we hear the testimony relating to count 1 we are in tough shape. We are going to sit here another five weeks and listen to the court reporter read it all back.

MR. ELLIS: Your Honor, I would suggest that the answer to that question, recognizing the difficulty, has to be yes, because if we answer it no or we qualify it in any way we are going to dissuade them from asking for testimony when they might be in doubt. I think that would just have to be our job, to decide what does pertain to the individual counts.

MR. LOPEZ: Your Honor, what I had suggested to the defense attorneys this morning is that each of them have ready the pages, for instance, on a specific count. I think the answer to that question would be, for instance, if they want to hear testimony on count 8, that the government submit -- these are substantive counts -- that the government submit what pages they think are appropriate as far as count 8 is concerned or count 21 and the defense submit that, and then of course your Honor is the ultimate judge of what

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2 pages should be read. So that an affirmative answer  
3 can be given to this.

4 Of course, all this applies to the substan-  
5 tive count. Count 1 is just impossible, unless they  
6 want to hear the whole record.

7 MR. ROSENBAUM: Just one problem with what  
8 Mr. Lopez is saying, however, and that is in certain  
9 aspects of cross examination that could be redundant.  
10 Some of my cross examination as well as some of co-  
11 counsel's cross examination did not go into areas covered  
12 by other counsel. For instance, with Mr. Stasi, there  
13 may be six or eight of us that were interested in  
14 certain aspects of his testimony. Mr. Fisher,  
15 Mrs. Rosner, Mr. Siegal, may have crossed on certain things  
16 I didn't want to do, and vice versa, but relied upon the  
17 jury remembering that cross examination.

18 If I may give your Honor an example -- maybe  
19 an example would not be in order at this time.

20 THE COURT: I understand the problem.  
21 However, let's answer yes and let's ask them to specify  
22 what count they want and let's see what we can do about  
23 working it out. Is everybody agreed to that?

24 MR. LOPEZ: Yes, your Honor.

25 MR. PHILLIPS: Your Honor, I think I agree



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with Mr. Ellis, that the basic answer to the jury's inquiry ought to be yes. I would also suggest to your Honor to consider what your Honor suggested that the jury be told that they can specify in any particulars that they want, whatever testimony that they want to hear, and I also suggest that your Honor might want to consider saying to the jury that once they start listening to whatever testimony they have requested if they wish to not hear any further they may so indicate.

MR. ELLIS: No, your Honor.

MR. LOPEZ: No.

THE COURT: That is much too dangerous. Then they are going to jump and say, "I don't want to hear the cross."

I recognize everybody is laughing, but it is a possibility, and I don't want to take that chance.

MR. WARNER: Your Honor, one probably I foresee, although I agree, of course, with the answer, is that in certain instances a specific transaction was not specifically accounted for or defended, it was simply part of a general attack on credibility. I think that problem can be dealt with as each question comes in.

THE COURT: Let's handle it when we see the specifics.

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MR. PANZER: Judge, could we get an idea of what time you are going to send the jury out?

THE COURT: They are not going to lunch.

MR. PANZER: What time would we be able to go out to lunch?

THE COURT: Let me send this note back. Let's see if we get a note back from them right away. Then we will decide.

Ladies and gentlemen, what I propose to do is send back a note to the jury which reads:

"Madam Forelady, in response to our note regarding testimony on a 'particular count along with the defense without hearing unrelated testimony,' the answer is yes."

That is simple enough. Anyone object to it?

The record should reflect that I am greeted with a thunderous silence.

(Court's Exhibits 83 and 84 were marked for identification.)

THE COURT: I am sorry to hold you here, but I did not have a carbon paper and I wanted to recopy the note which I am sending to the jury. That has been marked as a court's exhibit, Court's Exhibit 84.



● (At 3:10 p.m. a note was received from the jury.)

MR. ROSENBERG: Your Honor, we are missing a few defendants.

THE COURT: Where are they?

MR. ROSENBERG: They are downstairs.

THE COURT: Is the marshal bringing them up?

MR. EPSTEIN: Yes.

(Pause.)

THE COURT: I have a note which I received from the jury which will be marked as Court's Exhibit 85 for identification. The note reads:

"To Judge Duffy:

"Is it permitted to hear the summation regarding a particular defendant from the prosecuting and defending attorneys and/or your Honor's charge regarding a particular incident."

It is signed "Bob Claiborne."

MR. ELLIS: No. 9.

(Court's Exhibit 85 was marked for identification.)

MR. DOWD: Does it say who they want to hear?

THE COURT: No. Mr. Lopez, I will call

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2 upon you to speak. What is your reaction?

3 MR. LOPEZ: Your Honor, frankly speaking,  
4 I don't think they are entitled to hear either summations  
5 for the prosecution or the defense. I don't think that  
6 is the evidence in the case. However, your Honor  
7 in his discretion can permit them to hear my summation.

8 MR. SUNDEN: Judge, I would like the  
9 record to reflect that I am of a completely contrary  
10 opinion.

11 MR. FISHER: Your Honor, my position is  
12 that they are entitled to hear anything that probably  
13 occurred in front of them during this case, including  
14 summations. The only question here I think is which  
15 specifically do they want.

16 THE COURT: They haven't indicated.

17 MR. EPSTEIN: The defendant Tramunti  
18 would submit that whatever was in open court properly  
19 before the jury during the course of this trial can be re-  
20 read to the jury if the jury so requests during the course  
21 of their deliberations.

22 THE COURT: Is that the consensus, with the  
23 exception of Mr. Lopez?

24 MR. LOPEZ: No, I will agree to that.

25 THE COURT: Mr. Phillips, how do you feel



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2 about it?

3 MR. PHILLIPS: We agree, your Honor.

4 THE COURT: I just hope they don't want me  
5 to read back the entire charge.

6 MR. ELLIS: Judge, I would object to read-  
7 ing the summations to the jury. I am not sure this is  
8 a legal argument as distinguished from an argument  
9 addressed to your Honor's discretion. The government  
10 did devote an extraordinary time to the defendant Lamone.  
11 We have made certain requests of your Honor with respect  
12 to Lamone, particularly portions of the charge relating  
13 to the activities at the Beach Rose Social Club, which  
14 your Honor denied.

15 I summed up in the expectation that you  
16 would have a complete, balanced presentation of the  
17 evidence in your marshaling and I think that I would  
18 suggest as an alternative that we read the relevant evi-  
19 dence to the jury with respect to whatever defendant they  
20 are inquiring about rather than arguments of counsel.

21 MR. LOPEZ: Judge Duffy, I think that the  
22 consensus of opinion among defense counsel -- they can  
23 correct me if I am wrong -- is that the jury is entitled  
24 to hear any portion of what appears on the record. If  
25 they want to hear portions of Mr. Curran's summation,

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that is fine; if they want to hear any specific summa-

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tion, that is fine too. Let them hear what they have

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already heard. Certainly that can do no harm.

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MR. ELLIS: Judge, I would object to

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reading the portion of the government's summation, for

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example, that cloaks itself with the American flag.

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There were portions of the charge and portions of the

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summations that we regard as objectionable and we don't

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want to compound the error by reading it twice.

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THE COURT: All right. I propose to

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send back the following note:

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"To the jury: You may rehear any portion

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of what is already on the record, including the summa-

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tions of the prosecuting and defense attorneys. But

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you should know that these are merely arguments of ad-

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vocates. You may rehear any portion of the charge,

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including portions of my attempt at summarizing the

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evidence, but you should realize that my summarizing

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the evidence is not evidence.

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"Of course, if you want to hear any portion

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of the testimony reread that will be done."

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Does anyone object to it?

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MR. LOPEZ: Yes, your Honor.

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MR. FISHER: Yes, your Honor. Your Honor,



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2 I think the phrasing tends to dissuade them perhaps from  
3 their obvious desire to hear some of the summations and  
4 I think it tends to suggest perhaps that they ought to go  
5 back to the testimony, which apparently is not their desire.  
6 I think the note could be answered very succinctly, as  
7 your Honor has done once before: yes.

8 MR. LOPEZ: I agree.

9 MRS. ROSNER: No objection to that, your  
10 Honor.

11 MR. ELLIS: I would object to that, very,  
12 very strongly, your Honor.

13 MR. SUNDEN: Judge, I would object to the  
14 part of your note that alludes to rereading of your  
15 marshaling.

16 THE COURT: That is what they asked.

17 MR. SUNDEN: I didn't hear that.

18 THE COURT: ". . .and/or your Honor's  
19 charge regarding a particular incident."

20 MR. SUNDEN: I see. I would just like to  
21 state for the record that I know your Honor gave a blanket  
22 exception to the marshaling of the facts -- your Honor was  
23 fatigued that day and I didn't want to unduly articulate  
24 exceptions thereto, but I very strongly join in the  
25 exceptions as articulated by Mr. Rosenberg.

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2 I would, I guess at this point, object to any  
3 procedure that would have the effect of remouthing that  
4 marshaling of the facts, which I consider prejudicial to  
5 Alonzo, to the jury.

6 MR. LOPEZ: Your Honor, may I say that I  
7 believe that a majority of defense counsel here present  
8 in behalf of all defendants agree with Mr. Fisher, and  
9 I would ask defense counsel who agree with Mr. Fisher to  
10 stand up.

11 THE COURT: All right.

12 MR. ELLIS: Your Honor, this is not a mat-  
13 ter of majority vote.

14 THE COURT: No, no. What we are trying  
15 to do is find out who objects.

16 Those who agree stand up.

17 Mr. Dowd, you object to it.

18 MR. DOWD: I have a qualified yes.

19 MR. LOPEZ: Then sit half way up.

20 THE COURT: He has an objection to that too.

21 Mr. Ellis, you object.

22 MR. ELLIS: Yes.

23 THE COURT: Let me see who else is sitting.

24 I gather you are standing up for both of you?

25 MR. EPSTEIN: Yes, that's right.



2 MR. ELLIS: Your Honor, it was perfectly  
3 evidence yesterday during the reading of the testimony  
4 that a majority of the jurors reacted adversely to the  
5 prolonged reading and I think it is fair to say at this  
6 point, in view of their note, that they are looking for  
7 some way to avoid a repetition of yesterday's prolonged  
8 reading. I believe they are trying to boil this case  
9 down to the nutshell of hearing the arguments of A and  
10 the arguments of B and choosing between the two, and any  
11 note or any kind of communication from the court that  
12 doesn't remind the jurors that their primary obligation  
13 is to decide this case on the evidence if their recol-  
14 lection is imperfect or requires refreshment is grossly  
15 prejudicial, at least to Mamone, who was emphasized to  
16 an extraordinary degree in the summations, far out of  
17 proportion to his importance on the record.

18 THE COURT: All right. I intend to  
19 send back to the jury the note which I read to you.  
20 I am going to have that Xeroxed and have it marked as  
21 a court's exhibit. It will be the next court's  
22 exhibit, which is 86.

23 MR. FISHER: Your Honor, would you read the  
24 last part of that again?

25 MRS. ROSNER: Would you read the whole answer

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2 again.

3 THE COURT: You want me to read the whole  
4 thing?

5 MRS. ROSNER: Yes.

6 THE COURT: "To the Jury: You may re-  
7 hear any portion of what is already on the record, in-  
8 cluding the summations of the prosecuting and defense at-  
9 torneys, but you should know that these are merely argu-  
10 ments of advocates.

11 "You may rehear any portion of the charge,  
12 including the portions of my attempt at summarizing the  
13 evidence, but you should realize that my summarizing of  
14 the evidence is not evidence.

15 "Of course, if you want to hear any portion  
16 of the testimony reread that will be done."

17 MR. FISHER: If your Honor, please, would  
18 your Honor consider removing the word "merely" in  
19 front of "arguments" of defense counsel. I don't think  
20 arguments of defense counsel should be relegated, your  
21 Honor. I think they are pretty important to the defense  
22 as well as the government. Other than that we  
23 spent a week doing something merely.

24 THE COURT: I will let it say the way it  
25 is.



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2 (At 5:45 p.m. a note was received from the  
3 jury.)

4 (In open court.)

5 (Court's Exhibit 87 was marked for identifi-  
6 cation.)

xx 7 MR. FISHER: Your Honor, while we are  
8 waiting for the government could I put on the record the  
9 application I made?

10 THE COURT: Go ahead.

11 MR. FISHER: If your Honor please, at  
12 5:22, on behalf of all the defendants in this case, I asked  
13 the court to send a note into the jury stating that the  
14 jury may consider the arguments of counsel together with  
15 the record in the case and I was advised by your Honor's  
16 chambers that that application was denied.

17 THE COURT: That's right.

18 We have received another note from the jury  
19 which has been marked as Court's Exhibit 87 for identi-  
20 fication. The note reads:

21 "To Judge Duffy: We would like to hear  
22 testimony regarding Joseph DiNapoli in count 21 of  
23 December, 1971."

24 Signed "Madam Forelady."

25 Count 21 reads:

"The grand jury further charges in or about

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2 the month of December, 1971, in the Southern District  
3 of New York, Joseph DiNpaoli and Pat Dilacio, the  
4 defendants, unlawfully, wilfully and knowingly did  
5 distribute and possess with intent to distribute a  
6 Schedule I narcotic controlled substance; to wit, approxi-  
7 mately two kilograms of heroin."

8 MR. LOPEZ: Your Honor, my indications are  
9 that on that there are three pages for the government.

10 THE COURT: Starting at page 2174.

11 MR. LOPEZ: To 2177, and there are 44 pages  
12 for the defendant DiNapoli.

13 THE COURT: Where is it?

14 MR. LOPEZ: That would be from 2530 to 2574.  
15 Of course, that is the whole cross examination.

16 THE COURT: All right, Mr. Clerk. Bring  
17 in the jury.

18 MR. PHILLIPS: Is your Honor planning to  
19 read the pages that Mr. Lopez just cited or have the  
20 reporter read those pages.

21 THE COURT: Yes.

22 MR. PHILLIPS: We haven't had a chance to  
23 check them. We would like the opportunity to check  
24 them.

25 THE COURT: All right. Take a look at



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MR. FISHER: Your Honor, I renew the

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application I made with regard to the summations of

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counsel and I would ask the court at some appropriate,

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prior to or after the reading of the testimony to ad-

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vise the jury that summations of counsel may be con-

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sidered together with the record in the case.

8

I remind the court we were asked, the court

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was asked, whether or not it was permissible to

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have the summations read. The court then responded

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summations are merely argument of counsel, and I think

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quite naturally there was no subsequent request for

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any reading of the summations. I think perhaps, your

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Honor, most respectfully, the court might have inad-

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vertently suggested to the jury that summations of the

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defense or any counsel were to be denigrated with re-

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spect to the record, which I don't think is an appro-

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priate charge. I think perhaps the court might be

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able to correct some of that by at least at this point

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so advising them.

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THE COURT: No. I wrote that note with

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a full understanding of what I believe summations of

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counsel should be considered, of course. I am not

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going to change it at this point. The application

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is denied.

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2 MR. PHILLIPS: Your Honor, Mr. Lopez  
3 cited pages 2530 through 2574 as bearing on the delivery  
4 of narcotics by DiNapoli or on the distribution by  
5 DiNapoli in December of 1971. That part of the  
6 record that Mr. Lopez cited to you encompassed his en-  
7 tire cross examination of Mr. Pannirello.

8 We would submit that the only portion of  
9 his cross examination of Mr. Pannirello that related  
10 to the distribution by DiNapoli in December of 1971  
11 as charged in count 21 appears at the top of page 2568  
12 and goes for approximately several pages after that,  
13 to the bottom of page 2570.

14 We agree with Mr. Lopez' citation with  
15 respect to the direct examination of Mr. Pannirello  
16 as it touched upon the charge of DiNapoli distributing  
17 narcotics as contained in count 21, but as far as the  
18 rest of Mr. Lopez' cross examination is concerned it  
19 in no way touched upon the distribution by DiNapoli as  
20 charged in count 21 of the indictment.

21 MR. LOPEZ: Your Honor, I think -- are  
22 you finished, Mr. Phillips?

23 MR. PHILLIPS: Yes.

24 MR. LOPEZ: I think that credibility here  
25 is very much in issue and certainly page 2530 goes to



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2 the issue of credibility and I think that we are con-  
3 cerned with that in considering the reliability of the  
4 testimony, and that is why I am making the point as far  
5 as 2530. I would like to --

6 MR. PHILLIPS: Your Honor, if we get  
7 into credibility then everything that corroborated Harry  
8 Pannirello should be gone into as well, the testimony  
9 regarding the million dollars should be read to the jury, the  
10 testimony of Mr. Barnaba as it corroborated Harry  
11 Pannirello, the testimony of Dawson and Provitera as  
12 it corroborated Harry Pannirello should also be read,  
13 if we are going to into credibility, your Honor.

14 MR. LOPEZ: There is a point here in the  
15 cross examination that goes into identification, and  
16 there is also the point here where Pannirello indicates --  
17 I am looking for the page now, your Honor, if I just  
18 may have a moment --

19 THE COURT: Sure.

20 MR. PHILLIPS: All that the jury asked  
21 for, your Honor, as I understand the note, was the  
22 testimony that related to count 21, which charges DiNapoli  
23 in or about December, 1971 with distributing two  
24 kilograms of heroin.

25 MR. LOPEZ: Your Honor, with regard to

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count 21, I think the identification is important and I certainly feel that all the testimony should be read, but in addition to the pages that Mr. Phillips cited certainly pages 2548, 2549 --

THE COURT: Hold it. Let me get to it, please.

MR. LOPEZ: That would be 2548, starting from the bottom of the page:

"Q Let's go to DiNapoli.

"Did you ever in your whole life, you, ever receive a package in any quantity of narcotic drugs from Joseph DiNapoli?

"A No, not me."

I think that definitely has a bearing on count 21.

THE COURT: On 2549.

MR. LOPEZ: Yes, that whole page.

THE COURT: All right. 2548 and 2549.

MR. LOPEZ: What were those other pages, 2568, 2569.

MR. PHILLIPS: 2568 through the bottom of 2570, through line 21 of page 2570.

THE COURT: All right. And the identification testimony, that is located exactly where?



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MR. LOPEZ: The identification testimony,  
your Honor --

MR. PHILLIPS: Your Honor, we object to  
any identification testimony because that is clearly  
not what the jury is asking for.

THE COURT: I heard you.

MR. LOPEZ: That would be, your Honor --

THE COURT: All right. I gather from  
the bottom of 2535.

MR. LOPEZ: Right.

THE COURT: Is that right?

MR. LOPEZ: Yes, your Honor.

THE COURT: That is line 15 to where?

MR. PHILLIPS: Your Honor, if the identifi-  
cation is going to be read we would ask that Agent  
Nolan's testimony regarding Mr. Pannirello's prior out-  
of-court identification of Mr. DiNapoli also be read.

MR. LOPEZ: That has no bearing on this  
issue.

THE COURT: Let me get Mr. Lopez' requests  
first. Sit down. I will hear you out later.

MR. LOPEZ: That would be to page 2543,  
line 14.

THE COURT: All right. Now I will

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hear you, Mr. Phillips.

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MR. PHILLIPS: If your Honor is going to consider having the jury listen to the testimony regarding the identification of Mr. DiNapoli the government would ask that the redirect of Mr. Pannirello regarding the identification of Mr. DiNapoli be read as well as the testimony of Agent Nolan that touched upon the prior out-of-court identification by Mr. DiNapoli be read as well as the testimony of Agent Nolan that touched upon the prior out-of-court identification by Mr. Pannirello of Mr. DiNapoli.

THE COURT: All right. I will think about it. Right now I made arrangements for the jury to leave here to be at the restaurant at 6:30. I am going to read this testimony that you are asking me to read and I will rule on it as soon as we get back. Let's be back by 7:30.

MR. LOPEZ: Your Honor, may I just make one last request?

THE COURT: Yes.

MR. LOPEZ: As a matter of fact, I would encourage that in view of the fact that the cross examination of Pannirello was short by myself, I would encourage that all of it be read, and if the government then wishes



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2 based on that request to have redirect and Nolan's testi-  
3 mony read back on the issue of identification I have  
4 no objection. It will be to the point, I think, and  
5 it will cover everything. That way everybody is  
6 happy. We could have it that way.

7 THE COURT: All right. Let me think  
8 about it.

9 MR. PHILLIPS: Your Honor, may I cite to  
10 your Honor what I was referring to, the specific page  
11 references.

12 THE COURT: Sure.

13 MR. PHILLIPS: The redirect of Pannirello  
14 was page 2581 at line through page 2586 at line 10.

15 I haven't had a chance to check Nolan's  
16 testimony. We are in the process of doing it.

17 THE COURT: All right. You are talking  
18 only about the Nolan testimony on the identification.

19 MR. PHILLIPS: That's correct.

20 THE COURT: Fine.

21 MR. PHILLIPS: That starts on page 3406  
22 at line -- if I could have just a couple more minutes,  
23 your Honor, I think I can convey them to the clerk.

24 THE COURT: All right. 7:30 be back.

25 (Dinner recess.)

EVENING SESSION(8:00 p.m.)

(In the robing room.)

THE COURT: Mrs. Rosner, Mr. Curran, before I walked out of the building, after I told the marshals to take the jury to dinner, they handed the marshal a note, which I will read in great length outside. It involves basically both of you. It involves Louis Inglese and no one else. Maybe we can use this time profitably to find out what they want.

"We would like to hear the testimony regarding count 14 on Mr. Louis Inglese which occurred on or about the month of February, 1971.

"Also we would like to hear the testimony regarding count 23 on Mr. Louis Inglese which occurred on or about the month of May, 1973.

"We are requesting the preparation of the above material but we do not wish the material read in succession. Nor do we wish the above read in succession with the previously requested material.

"Sincerely, Madam Forelady."

(Court's Exhibit 88 was marked for identification.)

(Discussion off the record.)



(In open court.)

THE COURT: You recall we had a note marked 87, Court's Exhibit 87 for identification, which read:

"We would like to hear the testimony regarding Joseph DiNapoli in count 21 of December, 1971," signed "Madam Forelady."

On that, I intend to permit only the specific items which relate to count 21 to be read.

Mr. Lopez, I assume that you object.

MR. LOPEZ: Yes, your Honor.

THE COURT: My ruling will stand.

MR. LOPEZ: Yes, your Honor.

THE COURT: My ruling will stand.

MR. LOPEZ: Thank you, your Honor.

THE COURT: Court's Exhibit 88 marked for identification is a note which reads -- this I received immediately just before I walked out of the building.

"Dear Judge Duffy: We would like to hear the testimony regarding count 14 on Mr. Louis Inglese which occurred on or about the month of February, 1971.

"Also we would like to hear the testimony regarding count 28 on Mr. Louis Inglese which occurred on or about the month of May, '73.

"We are requesting preparation of the above

material but we do not wish the material read in succession. Nor do we wish the above read in succession with the previously requested material."

MR. FISHER: Is that signed, your Honor?

THE COURT: Yes. "Sincerely, Madam Fournalady."

MR. FISHER: F-o-u-r?

THE COURT: Yes, F-o-u-r.

On their return from dinner I received two other notes.

"Dear Judg Duffy: Please send any statements, exhibits or evidence relating to Richard Forbrick.

"The Jury," and under which is signed "Madam Forelady."

(Court's Exhibit 39 was marked for identification.)

THE COURT: The next:

"Dear Judge Duffy: We would like to see the exhibits entered by both the defense and prosecution in the case against Ben Tolopka, to wit, income tax returns, list of citations, sales tax certificate, et al.

"Sincerely."

Under the "Sincerely" is written "Also some more envelopes (Smile).



"Madam Fournalady. Thanks."

(Court's Exhibit 90 was marked for identification.)

THE COURT: What I intended to do is to have the jury back, read the testimony regarding Joseph DiNapoli and count 21. Then I am going to tell them to go back, since they did not want it read in succession, and as soon as they want the next thing read we will read that to them. Then they go back, come out again the third time, and after they do that hopefully we will be able to collect the Ben Tolopka exhibits. I guess, Mr. Richman, you have yours.

MR. RICHMAN: I have all of them, your Honor, except for one item which the government has.

THE COURT: All right. They will go in after the three readings of testimony, and by that time maybe we can agree as to what statements, exhibits, or evidence relating to Richard Forbrick is.

I have set out for the court reporter the sections which are to be read in connection with the count 21 request.

Bring back the jury.

(Jury present.)

THE COURT: Ladies and gentlemen, I am

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in receipt of four notes from you. I am going to take them in the order I received them.

The first note reads that you would like to hear the testimony regarding Joseph DiNapoli in count 21 of December, 1971.

I am going to have the court reporter read that testimony to you. After that is finished I want you to go back to the jury room. When you wish to hear the response to your next note I will take care of it. Just advise the marshal and we will take care of it then.

All right. Go ahead.

(Record read as follows:

Page 2174, line 1, to page 2177, line 4;  
Page 2548, line 21, to page 2549, line 10;  
Page 2567, line 18 to page 2569, line 23.)

MR. KING: Objection.

THE COURT: All right. Go ahead, continue reading.

(Record read.)

THE COURT: All right, Ma. Marshal.

MR. KING: Your Honor, before the jury retires may we have a side-bar?

THE COURT: No, not right now.



(The jury left the courtroom at 8:55 p.m.)

THE COURT: All right, Mr. King.

MR. KING: I just feel that any reference that the reporter made to Mr. Gamba your Honor should have instructed the jury to disregard. The pur of this rereading had only to do with DiNapoli. It had nothing to do with Mr. Gamba. Now they have heard for about the second or third time about his being a stash. I think it has been unduly emphasized and unfairly and to his prejudice.

THE COURT: All right. I assume that is a motion. The motion is denied.

Mrs. Rosner, why don't we go inside and see whether we can work this out.

MRS. ROSNER: Your Honor do you have a full copy of the transcript inside.

THE COURT: Not a full copy. The parts, I think, that belong. We will get the rest of them.

MR. ELLIS: Your Honor, I believe there may be references to Mamone.

(In the robing room.)

(Discussion off the record.)

(A discussion was held in the robing room in connection with Court's Exhibit No. 88, the request

of the jury to hear testimony regarding count 14 on Mr. Louis Inglese, also on count 28.

In connection with both counts, Mrs. Rosner requested that she be permitted to read the entire cross examination of the witness involved. That request has been denied.

In connection with count 14, the government has requested that the testimony to be read on direct be that of Mr. Barnaba from page 1422 through 1427, line 8.

Mr. Ellis and Mrs. Rosner suggest that the direct be terminated on page 1425 and Mr. Ellis particularly requested that the direct be terminated on line 16 on page 1425.

I have at this time not made any determination as to that request.

On the cross examination we have agreed that with my limiting ruling on the other counts the cross examination will be limited to page 1682, lines 1 to 15.

MRS. ROSNER: May the record reflect that apart from the request to read the whole cross there was a lesser included request to read 1694, line 18, to 1696, line 2, which was also denied.



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(At 10:15 a note was received from the jury.)

(In open court.)

THE COURT: I have a note from the jury which does not need to be included as a court record unless somebody would like it to be. I gather they are tired, they would like to go. I gather that all of you are tired also. Ten o'clock tomorrow.

MR. RICHMAN: Your Honor, could we make it an hour later. It takes me an hour and a half to get home today.

THE COURT: It takes me an hour and a half too. Ten o'clock tomorrow.

(Adjourned to 10:00 a.m., March 11, 1974.)